CHOO YIN LOO & ORS. v. REGISTRAR OF SOCIETIES, F.M. & ORS.

[O. C. J. (Buhagiar J.) June 10, 1957]

[K. L. — Originating Motion No. 3 of 1957]

Certiorari — Societies — Amendment to Rules of — Issue between members — Registrar of Societies — Jurisdiction — Internal administration of societies.

In this case an application was made to the Registrar by five members of the Fui Chiu Association appointed a "Chairman" at the General Meeting of the Association held on December 4, 1955 for the approval of the Registrar to certain amendments to the Rules alleged to have been passed on that date. An objection was lodged on behalf of the President (Choo Yin Loo) and members of the Committee. The Registrar of Societies having considered the objection decided to give approval to the amendments.

In this motion the objectors sought relief by way of *certiorari* alleging that the Registrar was wrong in law in approving the amendments.

Held: (1) in this case, *certiorari* did not lie because *certiorari* is not designed nor can it properly be used to determine issues between parties; the crux of the matter in this case was whether the General Meeting of the Association on December 4, 1955 was properly held or not. This was an issue between members of the Association and any decision taken by the Registrar of Societies in approving the amendments to the Rules could not affect the validity or otherwise of that General Meeting;

(2) the Registrar of Societies is not concerned with the internal administration of societies except in so far as such administration offends against the Societies Ordinance or the obvious reasons of that Ordinance;

(3) in this case the Registrar had no jurisdiction to determine the questions which were being attacked in the application and it did not follow that because he applied his mind to the objections submitted to him and gave his views thereon, he was acting judicially in exercising the power to approve the amendments to the Rules.

Case referred to :—

(1) *Brown v. Secular Society Ltd.* (1917) A.C. 406.

MOTION for Writ of *Certiorari.*

L. A. J. Smith (*N. A. Marjoribanks* with him) for the applicants.

D. M. K. Grant (Sr. Federal Counsel) for the Registrar of Societies.

R. Ramani (*R. G. Ritchie* with him) for the other respondents.

Buhagiar J. : — This was an application in the nature of a writ of *certiorari* for an order to remove the proceedings held by the Registrar of Societies on the 7th day of March, 1956 into this Court and quashed forthwith and for an order of costs of and occasioned by this motion.

Briefly the facts are these: An application was made to the Registrar of Societies by five members of the Fui Chiu Association appointed as "Chairman" at the General Meeting of the Association held on the 4th December, 1955, for the approval of the Registrar to certain amendments to the Rules alleged to have been passed on that date. An objection was lodged on behalf of the President (Choo Yin Loo) and members of the Committee.

The Registrar of Societies having given considera tion to the objection decided to give approval to the amendments.

The applicants (objectors) sought relief by way of *certiorari* alleging that he was wrong in law in approving the amendments to the Rules on the grounds that he held that :—

(a) he had jurisdiction to grant the application;

(b) the General Meeting of the Association held on the 4th December, 1955 was properly held;

(c) the said General Meeting had not before passing any resolution been properly postponed;

(d) members of the Association had prior to the said General Meeting explicit notice of the amendments suggested; and

(e) none of the amendments conflict with another Rule.

At the hearing of this application it was agreed that the question whether a *certiorari* lies to the Registrar of Societies in the circumstances alleged in this case and the arguments before me were limited to that point. At the conclusion of the hearing I held that *certiorari* does not lie.

The ground for so holding is, as I stated briefly in open Court, that *certiorari* is not designed nor can it properly be used to determine issues between parties; the crux of the matter in this case is whether the General Meeting of the association of the 4th of December, 1955 was properly held or not. This is an issue between the members of the Association and any decision taken by the Registrar of Societies in approving the amend-ments to the Rules cannot affect the validity or otherwise of that General Meeting. In coming to his decision to approve the amendments the Registrar took into consideration the objections submitted to him and took a certain view on those objections. The views he expressed, however, are not conclusive or binding on the members of the Association and the fact that the Registrar gave his approval to certain amendments of the Rules of the Association does not make them valid if they were not either by reason of conflict with other Rules or by reason of their having been made at a meeting which was not held in accordance with the Rules of the Association. The Registrar of Societies is not concerned with the internal administration of societies except in so far as such administration offends against the Societies Ordinance or the obvious reasons of that Ordinance. Thus in the case of *Brown v. Secular Society Ltd.*[1] where the conclusiveness of the certificate of incorporation upon the legality of the

objects of a company was considered, Lord Finlay, L.C. at p. 432, said: "... if these purposes (of the society) are illegal, their illegality is not mended by the certificate of incorporation." The Registrar of Societies has no jurisdiction to determine the questions which are being attacked in this application and it does not follow that because he applied his mind to the objections submitted to him and gave his views thereon, he was acting judicially in exercising the power to approve the amendments of the Rules. The proper remedy in this case is for the members of the Association to contest the validity or invalidity of the meeting of 4th December, 1955, before the competent Court, and indeed there is a suit pending where this matter is in issue.

For the above reasons I dismissed the application with costs.

Application dismissed.

Solicitors: *Lovelace & Hastings.*

SAW SENG KEW & CO. LTD. v. FIRM OF M.S.A. SHAIK OTHUMAN

[O. C. J. (Shepherd J.) June 27, 1957]

[Penang — Summons-in-Chambers No. 121 of 1957]

Practice — R.S.C., O. 12, rr. 2 & 3, O. 63, r. 1 — Appearance entered in suit signed "per pro ..." by atttorney in principal's name — Irregularity.

In this application the plaintiff sought to set aside for irregularity the appearance entered in the suit signed "per pro M.S.A. Shaik Othuman" on the ground that an attorney cannot enter appearance for, or in the name of his principal under O. 12 rr. 2 and 3. The appearance was entered by the defendant stating that he appeared in person, and the form used was signed as stated above.

Held: (1) the term "per pro" or "p.p" expresses an authority created by procuration or power of attorney. The use of the abbreviation implies a limited authority;

(2) in proceedings such as in this case their use has no relevance, and therefore the appearance signed as described was an irregularity;

(3) in this case the appearance must be set aside on the ground that it did not comply with the Rules of the Supreme Court.

Cases referred to:—

(1) *Choo Ang Chee v. Wee Theam Tew* noted in *Mallal's* S.S. Practice p. 48.

(2) *Ulster Bank v. Synnott* (1871) I.R. 5 Eq. 595.

SUMMONS-IN-CHAMBERS adjourned into Open Court.

C. O. Lim for the applicants.

Respondent in person.

Shepherd J. (delivering Oral judgment): — This is an application by way of summons-in-chambers in Civil Suit No. 28 of 1957 praying that the appearance entered in this Suit signed "per pro M.S.A. Shaik Othuman" be set aside for irregularity on the ground that an attorney cannot enter appearance for, or in the name of his principal under Order 12 rules 2 and 3. Order 12 rules 2 and 3 read as follows.—

"2. — (1) A defendant shall enter his appearance by delivering or causing to be delivered to the Registrar a memorandum in writing, dated on the day of delivery, and containing the name of the defendant's solicitor, or stating that the defendant defends in person, and the Registrar shall forthwith file the memorandum.

(2) He shall at the same time deliver to the Registrar a duplicate of the memorandum which the Registrar shall seal with the official seal, and mark with the date on which it is sealed, and then return it to the person entering the appearance, and the duplicate memorandum so sealed and marked shall be a certificate that the appearance was entered on the day indicated.

3. — (1) A defendant shall on the day on which he enters appearance give notice thereof, in accordance with Form 10 in Schedule A, to the plaintiff's solicitor, or, if the plaintiff sues in person, to the plaintiff himself.

(2) The notice may be served either in the ordinary way at the address for service, or by prepaid letter directed to that address and posted on the day of entering appearance."

In this case an appearance was entered on the 27th February, 1957 by the defendant stating that he appeared in person by means of a form as follows:—

"To,
The Registrar,
High Court,
Penang.

Be pleased to enter an appearance on behalf of the Firm of M.S.A. Shaik Othuman the Defendant in the above Suit.

Dated at Penang this 27th day of February, 1957.

Per Pro M.S.A. Shaik Othuman
(Signed) Illegible
Defendant abovenamed
in person.

The Defendant requires delivery of a Statement of Claim.

The address for service of the Defendant is at No. 51, Queen Street, Penang.

To:

The Plaintiffs abovenamed or their Solicitors, Messrs. Lim, Lim & Oon of No. 29, Church Street, Penang."

The affidavit in support by the plaintiffs-applicants stated that the Memorandum of Appearance was signed by one M.S.A. Zakariah per pro the defendant firm and that they (the plaintiffs-applicants) were informed by the Solicitors and verily believed that the said M.S.A. Zakariah either as such "per pro" or attorney of the defendant firm could not enter appearance for or in the name of his principal. The affidavit also averred that the defendant firm is within the jurisdiction of this Court.